

**TITLE 10: MANAGED RISK MEDICAL INSURANCE BOARD
NOTICE OF PROPOSED REGULATIONS**

R-2-06

NOTICE IS HEREBY GIVEN that the Managed Risk Medical Insurance Board (MRMIB) proposes to permanently adopt changes to Chapters 5.6 and 5.8 of Title 10 of the California Code of Regulations.

AB1807, (Chapter 74, Statutes of 2006), the 2006 Budget Health Trailer Bill, identified a number of changes to the Access for Infants and Mothers (AIM) program and Healthy Family Program (HFP). These and other related changes were approved by the OAL as emergency regulations and are described in the Informative Digest.

The changes in AB 1807 to the AIM program primarily focus on new eligibility requirements for infants born to AIM mothers on or after July 1, 2007. In order to better conform to federal policy, infants born to AIM mothers on or after July 1, 2007, will no longer be automatically eligible for HFP if they have other coverage through employer sponsored insurance or Medi-Cal.

AB1807 also removed previous requirements that an applicant to the HFP must include the 1st full month's premium payment with their initial application in order to enroll their eligible child in HFP. OAL approved the removal of a related barrier to enrollment, as emergency regulations. This barrier is the requirement that families must select a health, dental and vision plan at the time of application in order to be eligible.

Emergency regulations were approved that give MRMIB the authority to implement enhancements to the Certified Application Assistance (CAA) process. The 2006 Budget Act added funds to increase the incentives that are paid to the Enrollment Entities and CAA's who provide assistance to a family to complete HFP/MC applications or HFP AER forms.

In addition this Notice includes other changes related to federal compliance in AIM which were not included as approved emergency regulations.

The details of the emergency regulations and proposed changes are found in the Informative Digest/Policy Statement Overview.

MRMIB has scheduled a public hearing in Sacramento, California, for October 11, 2007 from 1:30 p.m. to 2:30 p.m. at the following address:

1000 G Street, Suite 450
Front Conference Room
Sacramento, CA 95814

It is requested, but not required, that any person wishing to present testimony should register at 1:30 p.m. on October 11, 2007. The hearing will be adjourned immediately following the completion of oral and written testimony presentations. This public hearing is for the purpose of considering regulations. The MRMIB upon its own motion, or at the instance of any interested persons, may adopt the proposals substantially as presented.

The MRMIB may modify the regulations after public hearing and adopt the modified regulations if the regulations as modified are sufficiently related to the text made available to the public, so that the public was adequately placed on notice that the regulations as modified could result from the proposed regulatory action. The text of any regulation as modified will be mailed to all persons who testify or submit written comments at the public hearing, submit written comments during the public comment period, and all persons who request notification, at least 15 days prior to the date on which the MRMIB adopts the regulations. A request for a copy of any regulations as modified should be addressed to JoAnne French at the address below.

Any person interested may submit written comments relating to the proposals in writing to:

JoAnne French
Managed Risk Medical Insurance Board
1000 G Street, Suite 450
Sacramento, CA 95814
Phone: 916-327-7978
Fax: 916-327-6580
E-mail: jfrench@mrrib.ca.gov

The back up contact person is:

Randi Turner
Managed Risk Medical Insurance Board
1000 G Street, Suite 450
Sacramento CA 95814
Phone: (916) 327-8243
Fax: (916) 327-6580
E-mail: rturner@mrrib.ca.gov

Written comments must be received by 5:00 p.m. on October 11, 2007. Written comments received after October 11, 2007 may not be assured of consideration unless otherwise expressly stated by the hearing officer. It is requested, but not required, that persons making oral presentations at the hearing provide a written version of their comments at the conclusion of their remarks.

The public hearing facility is accessible to persons with mobility impairments. If you are in need of a language interpreter, including sign language, at the hearing, or have other special needs, please notify MRMIB at least two weeks prior to the hearing.

An Informative Digest/Policy Statement Overview for the proposed regulation changes, including fiscal impact statements and other required determinations are included below. These regulations are written in plain English. An Initial Statement of Reasons for the proposed action has been prepared. These, and copies of the proposed regulations, may be requested by telephone, or by writing to the above address. In addition, the Board has available a rulemaking file which contains all the information upon which the proposed regulations are based. This file is available for public perusal at the MRMIB office (see address above), during normal office hours, 8:00 a.m. to 5:00 p.m., Monday through Friday. The pertinent documents (proposed regulations and Initial Statement of Reasons) pertaining to this rulemaking can be obtained on MRMIB's website at www.mrmib.ca.gov. The final Statement of Reasons can be obtained when available, after the public hearing and final adoption, by contacting JoAnne French at (916) 327-7978 or jfrench@mrmib.ca.gov.

Please address questions and requests for available information concerning the proposed regulations to JoAnne French at (916) 327-7978 at the address listed above. She can answer questions regarding the substance of the proposed regulations or can direct the question to the appropriate person within the Board. Gina Van Nes is designated as the small business advocate contact person for the Board.

AUTHORITY AND REFERENCES

AIM Authority: Sections 12696.05, Insurance Code.

AIM Reference: Sections 12693.765, 12695, 12695.06, 12695.08, 12695.18, 12695.20, 12695.22, 12695.24, 12696, 12696.05, and 12698 Insurance Codes, and 42CFR Section 457.475.

HFP Authority: Sections 12693.21, 12693.75, and 12693.755 Insurance Code, and Section 14005.41 Welfare and Institutions Code.

HFP Reference: Sections 12693.02, 12693.21, 12963.32, 12963.325, 12693.43, 12693.46, 12693.70, 12693.71, 12693.73, 12693.74, 12693.75, 12693.755, and 12693.765 Insurance Codes.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing Laws and Regulations

Insurance Code Sections 12695, et. Seq. established the Access for Infants and Mothers (AIM) Program in 1991, under the direction of the Managed Risk Medical Insurance Board (MRMIB).

Title 10, California Code of Regulations, Chapter 5.6 implements the Access for Infants and Mothers (AIM) Program.

Insurance Code Section 12693, et seq., established the Healthy Families Program (HFP) in 1997, under the direction of the Managed Risk Medical Insurance Board (MRMIB).

Title 10, California Code of Regulations, Chapter 5.8 implements the Healthy Families Program.

Policy Statement Overview

In August 1997, the Federal Government established a new program, the State Children's Health Insurance Program (SCHIP), by adding Title XXI to the Social Security Act. The program provides health care services to uninsured, low-income children. The program is targeted to serve children whose family's income, although low, is too high to qualify for the Title XIX Medicaid Program, called Medi-Cal in California. The Legislature passed and the Governor signed AB 1126, resulting in Chapter 623, Statutes of 1997 (AB 1126). Under that law, California took the option of both expanding its Medi-Cal Program and establishing a new stand alone children's health insurance program, the Healthy Families Program (HFP). The Department of Health Care Services (DHCS) administers the Medi-Cal expansion through its own Regulations. The Managed Risk Medical Insurance Board (MRMIB) administers the HFP. The basic structure of the HFP is set out in Regulations approved by the Office of Administrative Law, which established Chapter 5.8 of Title 10 of the California Code of Regulations.

Insurance Code Sections 12695, et seq. established the Access for Infants and Mothers (AIM) Program in 1991, to provide health insurance to low and moderate income pregnant women and the infants born to the covered women. The AIM program, which

is managed by the MRMIB, is covered in regulations in Chapter 5.6 of Title 10 of the California Code of Regulations. AIM is funded by:

1. Cigarette and Tobacco Products Surtax Fund (Prop. 99);
2. Federal Funds from Title XXI of the Social Security Act (SCHIP); and
3. Subscriber contributions.

The Federal Government has funded the costs of some AIM infants since 1998 and, in 2004; AIM infants were automatically enrolled into the HFP and became eligible for SCHIP funding. The Federal Government recently approved SCHIP funding to cover most of the costs of women in AIM.

The most recent health programs trailer bill, Assembly Bill 1807 (Chapter 74, Statutes of 2006) (AB 1807), identified a number of changes to both the HFP and AIM programs, which are being covered through this regulation package. AB 1807 gave the Board authority to file regulations resulting from this trailer bill as emergency regulations. Corresponding changes needed to complement the access changes added by AB 1807 are also included. These were also approved as emergency regulations. Other changes included in this Notice were not authorized or approved as emergency regulations and are being submitted for formal public review through this Notice. The changes to the AIM Regulations are summarized as follows:

AIM is a means tested program, covering pregnant women with family incomes above 200%, but not more than 300%, of the federal poverty level (FPL). Women with family incomes below 200% FPL qualify for no-cost Medi-Cal services for their pregnancy, funded by State and Federal dollars. Those infants born to subscribers enrolled in the AIM program on or after July 1, 2004 are automatically eligible for the Healthy Families Program. In order for an infant to be enrolled in the HFP, the AIM subscriber must register the infant into the HFP and pay for the first monthly child contribution amount.

Assembly Bill 1807 identifies new eligibility requirements for infants born to AIM mothers, commencing on or after July 1, 2007. Infants born to AIM subscribers on or after July 1, 2007 are no longer automatically eligible for the HFP. In order for an infant to qualify for the HFP, the child cannot be enrolled in employer sponsored insurance (ESI) and cannot be enrolled in the no-cost full scope Medi-Cal program. Prior to July 1, 2007, any infant born to a woman (whose enrollment in the AIM Program occurs after June 30, 2004) was automatically enrolled into the HFP despite whether or not the infant has ESI or no-cost Medi-Cal coverage. Not only did this create a possible situation in which a child may have dual coverage, but it also promoted inconsistency in the enrollment requirements between AIM-linked babies and other children who are enrolled in the HFP.

The implementation of AB 1807 requires changes to the current AIM Regulations in order to assure conformity with the statute change contained in Insurance Code Section 12693.70. This results in changes to Section 2699.205 of the AIM Regulations, on registration of infants.

In addition to changes resulting from AB 1807, the MRMIB is proposing through this Notice, changes to conform to a federal requirement for the mother's coverage. This is necessary because the AIM program now draws Title XXI funding to cover most of the costs of providing services to AIM mothers. These changes were not included in the approved Emergency Filing and are explained below.

Under Federal Law (42USC Section 1397ee(c)(5)), federal funding may not be used to pay for abortion services, except those that result from incest or rape or services necessary to save the life of the mother. 42 CFR, Part 457, Section 457.475, requires states, in which managed care entities provide abortions at state only expense (as does California), provide the services under a separate contract using non-federal funds. This results in adding a definition, "state supported services", to mean abortion services, in Section 2699.205, on definitions and adopting Section 2699. 402, in Article 4, to add a standard that the state supported services shall be paid for by state dollars only.

The changes to the HFP Regulations are summarized below:

Assembly Bill 1807 removes the previous requirement that applicants to the HFP must include the 1st full month's premium payment with their initial application in order to enroll their eligible children into the HFP. This requirement previously caused an unnecessary delay in enrollment and denial of eligible children.

This results in changes to Section 2699.6600 on the HFP Application and Section 2699.6813, on family contribution payments.

In conjunction with the change to the premium payment requirement, it is essential that the MRMIB also remove the requirement to include health, dental and/or vision plan selections as a part of the application and enrollment process, which has acted as a similar barrier to enrollment. The 2006/2007 Budget Concept Proposal identified a streamlining process to enroll qualifying children more expeditiously without further delays. As a result of the streamlining process, applications will not be denied based solely on of the applicant not providing his/her health, dental and/or vision plan selections. The program will still follow up with the family on plan selection. If the family does not respond, the program will assign the applicant children to the health plan in the county of residence with a Community Provider Plan designation and to an available dental and vision plan on an alternate assignment basis. Families who are not satisfied with the plans selected by the program may change plans for a period of time under existing regulations or during annual open enrollment.

This results in changes to Section 2699.6600 on the HFP Application and Section 2699.6607, on determination of eligibility.

Assembly Bill 1807 includes new eligibility requirements that, as of July 1, 2007, AIM-linked infants who are enrolling into the HFP cannot be covered by employer sponsored insurance (ESI) or enrolled in the full-scope no-cost Medi-Cal program. Prior to that date, any infant born to a woman (whose enrollment in the AIM Program occurs after June 30, 2004) was automatically enrolled into the HFP whether or not the infant has ESI or no-cost Medi-Cal coverage. Not only did this create a possible situation in which a child may have dual coverage, but it also promoted inconsistency in the eligibility requirements between AIM-linked infants and other children who are enrolled in the HFP. Changes corresponding to the changes made to AIM regulations must also be made to the HFP regulations.

This results in changes to Section 2699.6608, on enrollment of AIM infants and 2699.6613, on starting date of coverage for subscribers.

The HFP uses and pays qualified organizations called Enrollment Entities (EEs) to assist families in applying for the HFP and the MediCal for Families Program (MCFP). The 2006/2007 Budget Act added funds for the Board to increase payments to EEs when their Certified Application Assistants (CAAs) help families to complete the initial application for the HFP and MCFP, when the application results in the child(ren) successfully enrolling into either of the programs. The Budget Act also added funds to increase the payments to EEs when a CAA assist families to complete the HFP Annual Eligibility Review (AER) forms and the children successfully re-qualify for the HFP for an additional year. Assembly Bill 1807 gave the Board emergency regulation authority to implement these enhancements through regulations.

Currently, EEs are reimbursed \$50 when their CAA staff provides assistance to families to complete the initial HFP or MCFP applications when a child is enrolled in either the HFP or MCFP. If children in the same household are enrolled in both the HFP and MCFP from the same application, the EE will receive \$50 from each program (a maximum of \$100 per application). The initial application may be submitted either by paper or electronically via the internet.

In addition, the child enrolled in HFP must submit an AER form in order to re-qualify for another year of health, dental and vision coverage. If a CAA provides assistance during the AER, the EE is reimbursed \$25 for each AER form that results in a child re-qualifying for the HFP.

The Board is using the increased funding for the following changes to the EE reimbursement amounts:

- On and after July 1, 2006, any CAA who provides assistance completing the initial HFP and MCFP application which is submitted electronically, the EE will receive an additional \$10 incentive (a total of \$60) for a successful enrollment in the HFP or MCFP.
- On and after July 1, 2006, any CAA who provides assistance to a family to complete the HFP AER form, the EE will receive an additional \$25 incentive (a total of \$50) for a successful re-qualification in the HFP program.

This results in changes to Section 2699.6629, on payment for application assistance.

In addition, the Board is also using this opportunity to update the application reference information in Section 2699.6600 and to correct a cross reference error to Subsection (c) in Section 2699.6625 on annual eligibility review. These changes were not included in the approved emergency filing.

Implementing AB 1807 requires changes to the current HFP Regulations to reflect the authority of MRMIB, pursuant to Section 12696.05 of the Insurance Code, which gives the MRMIB the authority to determine eligibility criteria for the program. The additional funds for application assistance result in changes to the current HFP Regulations to reflect the increase in payment to Enrollment Entities, pursuant to Section 12693.32 of the Insurance Code, which gives the MRMIB authority to reimburse organizations that assist families in enrolling in the HFP or MCFP programs during the initial application process or during the HFP AER process. AB 1807 granted MRMIB emergency authority to implement these regulation changes.

These regulations were reviewed in public at two Board meetings on October 25 and November 15, 2006 and approved by the Board at the November 15 meeting. The regulations, with the exception of adding the definition of state supported services for AIM, updates of the issue dates for the HFP printed and electronic application in Section 2699.6600 and the technical correction to Section 2699.6325, were approved by the Office of Administrative Law as emergency regulations on July 30, 2007.

Documents Incorporated by Reference

No documents were incorporated by reference.

DETERMINATIONS

In accordance with Government Code Section 11346.5(A) (7), the Managed Risk Medical Insurance Board must determine that no reasonable alternative considered by the Board, or that has been otherwise identified and brought to the attention of the

Board, would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed regulations.

The Managed Risk Medical Insurance Board has determined that the regulations would not impose a mandate on local agencies or school districts, nor are there any costs for which reimbursement is required by Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

The Proposed Action Differs Substantially From an Existing Comparable Federal Regulation or Statute:

No

Mandates on Local Agencies or School Districts:

None

Mandate Requires State Reimbursement Pursuant to Part 7 (commencing with section 17500) of Division 4 of the Government Code:

None

Cost to Any Local Agency or School District That Requires Reimbursement Pursuant to Part 7 (commencing with section 17500) of Division 4:

None.

Nondiscretionary Costs or Savings Imposed on Local Agencies:

None

Significant effect on housing costs: None.

Cost or Savings to Any State Agency:

The provision of AB 1807, Chapter 74, Statutes of 2006, identified changes to both the Healthy Families Program (HFP) and Access for Infants and Mothers Program (AIM). Following are the changes to the AIM and HFP regulations as well as the fiscal effect for each of these programs on state government.

Access for Infants and Mothers Program:

AB 1807 identifies new eligibility requirements for infants born to AIM mothers commencing on or after July 1, 2007. Infants born to AIM mothers on or after July 1, 2007 will no longer be automatically eligible for HFP. In order for an infant to qualify for HFP, the child cannot be enrolled in an employer sponsored insurance (ESI) and cannot be enrolled in the no-cost full scope Medi-Cal program. These new eligibility requirements for infants born to AIM mothers have also been made in the HFP regulations.

It is anticipated that this statute change would result in annual savings to the state of up to \$951,000 (\$333,000 General Fund). The savings would come from not enrolling infants who are already enrolled in no cost Medi-Cal or ESI. Based on current data from the statewide Medi-Cal Eligibility Data System (MEDS), an average of 4.6% of the AIM-Linked infants are also receiving no cost Medi-Cal. Applying this percentage to the 2006-07 enrollments for AIM mothers results in annualized savings of approximately \$475,500 (\$166,425 General Fund). The percentage of infants who are enrolled in ESI is unknown at this time, but it is likely to be at or above the percentage of infants in no-cost Medi-Cal; if this is the case, the statute change could yield an additional \$475,500 (\$166,425 General Fund) in savings.

These savings would be offset by the one-time costs of system changes and ongoing cost of reduced disenrollment for non-payment of premiums. The 2006 HFP November Estimate included \$300,000 in total funds (\$105,000 General Fund) in one-time cost for system changes) in 2006-07. The cost of reduced disenrollments is estimated at \$44,000 (\$15,000 General Fund) annually beginning in 2007-08. Any savings resulting from this change have been accounted for in the annual budget estimate for the Healthy Families Program.

Healthy Families Program:

AB 1807 removes previous requirements that an applicant to the HFP must include the 1st full month's premium payment with their initial application in order to enroll their eligible child in HFP. In addition with the change to the premium payment requirement, the requirement to include health, dental and/or vision plan selections as part of the application and enrolled process has been removed.

The 2007 HFP May Revision Estimate included total funding for the current year of \$10.2 million total funds (\$3.5 million General Fund) and for the budget year the total funding is \$34.7 million (\$12.7 million General Fund) to reflect anticipated new enrollment in HFP resulting from the changes at initial application. Since the applicants are no longer required to submit their 1st fill months' premium payment with their initial application, the administrative vendor will bill for the 1st month's premium payment when they are successfully enrolled. Therefore this change does not result in a reduction in premiums to the Healthy Families Program.

AB 1807 gave the Board emergency regulation authority to implement enhancements to the Certified Application Assistance process. Currently the enrollment entities (EEs) are reimbursed \$50 when their CAA staff provides assistance to families to complete the initial HFP or MC applications when a child is enrolled in either HFP or MC. Once the CAA has provided assistance to the applicant, the CAA can then submit the initial application either by paper or electronically via the internet. In addition, a child enrolled in HFP must submit an Annual Eligibility Redetermination (AER) form in order to requalify for another year of health, dental and vision coverage. If a CAA provides assistance during AER, the EE is reimbursed \$25 for each AER form that results in a child re-qualifying for the HFP.

The 2006 Budget Act added funds for the Board to increase payments to EEs when their CAAs help families successfully enroll in HFP/MC via the HFP/MC initial application submitted electronically and for assistance during AER that results in a child re-qualifying for HFP. The increased funding is being used for the following changes to the EE reimbursement amounts:

- On and after July 1, 2006, any CAA who provides assistance completing the initial HFP/MC application which is submitted electronically, the EE will receive an additional \$10 incentive (a total of \$60) for a successful enrollment in HFP or MC.
- On or after July 1, 2006, any CAA who provides assistance to a family to complete the HFP AER form, the EE will receive an additional \$25 incentive (a total of \$50) for a successful re-qualification in the HFP program.

The 2006/07 Budget included total funding of \$10.2 million (\$3.8 million General Fund) for the 2006/07 budget year and the 2007 May Revision Estimate included \$14.2 million in total funds (\$5.3 million General Fund) in the 2007/08 budget year to reflect the updated application assistance incentive estimate and the impact to HFP enrollment.

Cost or Savings in Federal Funding to the State:

Under the Title XXI State Children's Health Insurance Program (S-CHIP), the Federal government covers 65% of all eligible program cost. Each of the following changes to the Healthy Families Program will impact the federal funding for HFP:

Access for Infants and Mothers Program:

New Eligibility Requirements for infants born to AIM mothers on or after July 1, 2007 who will no longer be automatically eligible for HFP if the child is enrolled in employer sponsored coverage or no-cost full scope Medi-Cal program.

As indicated in the section "Fiscal Effect on State Government" the 2006 HFP November Estimate included \$300,000 in total funds (\$195,000 Federal Funds) in one-time costs for system changes in 2006-07. Any savings or costs resulting from not enrolling infants who are already eligible for no cost Medi-Cal or ESI have been accounted for in the annual budget estimate for the Healthy Families Program.

Healthy Families Program:

AB 1807 removes the requirement that an applicant to HFP must include the 1st full month's premium payment with their initial application and the requirement to include health, dental and/or vision plan selections in order to enroll their eligible child in HFP.

As indicated in the section "Fiscal Effect on State Government" the 2006 HFP November Estimate included in the 2006/07 budget year \$9.5 million in total funds (\$6 million Federal Funds) and for the 2007/08 budget year \$34.6 million in total funds (\$22 million Federal Funds) to reflect anticipated new enrollment in HFP resulting from the changes at initial application. In addition, since the applicants are no longer required to submit their 1st full months' premium payment with their initial application, the administrative vendor will bill for the 1st month's premium payment when they are successfully enrolled. Therefore this change does not result in a reduction in premiums to the Healthy Families Program.

AB 1807 also gave the Board emergency regulation authority to implement enhancements to the Certified Application Assistance process.

As indicated in the section "Fiscal Effect on State Government" the 2006 HFP November Estimate included \$10.3 million in total funds (\$6.5 million in Federal Funds) in the 2006/07 budget year and \$14.8 million in total funds (\$9.3 million in Federal Funds) in the 2007/08 budget year to reflect the updated application assistance incentive estimate and the impact to HFP enrollment.

Business Impact Statement

The Board has assessed the impact of these regulatory changes on California businesses, including small businesses. There is no known significant statewide adverse economic impact directly affecting California businesses, including the ability of California businesses to compete with businesses in other states. The changes to the eligibility and enrollment criteria for AIM and HFP have no effect on businesses in California. The Board is increasing the fees to enrollment entities and certified application assistants as an incentive to use the electronic application and for helping families to complete the Annual Eligibility Revive process. Some of these entities are small businesses, so there will be a positive economic impact. However the Board has assessed that the impact of these regulatory changes will not be significant enough to either create new jobs or businesses or eliminate existing jobs

or businesses or affect the expansion of businesses currently doing business within California.

Cost Impact on Representative Private Persons or Businesses

The Board has considered the cost impact on representative private persons or businesses impacted by these regulations. The Board is not aware of any major cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. Although a newborn infant in an AIM family with other forms of health insurance coverage for the newborn will no longer be automatically enrolled in Healthy Families, the infant will still have coverage through Employer Sponsored Insurance or Medi-Cal.